

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 3/11/2024
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

JAMES KELLY,

Defendant.

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GREGORY H. WOODS, United States District Judge:

1:23-cr-113-GHW

ORDER

On March 8, 2024, the defendant filed a motion seeking preclusion of evidence related to an alleged out-of-court identification of the defendant. Dkt. No. 113. The motion was filed as a letter motion. The Government filed a letter brief in opposition to the motion in the evening of March 10, 2024. Neither the defendant's motion, nor the Government's opposition was supported by affidavits presenting the facts to be considered by the Court in connection with the motion, although the Government's letter attached unverified copies of two exhibits. The Court understands that the parties briefed the issues to the Court in letter briefing because of the imminence of the March 11, 2024 trial date.

The Court agrees with the Government that the deadline for filing motions in limine has passed. The Court does not expect that further motions in limine will be filed without a showing of good cause and prior leave of Court. Nonetheless, the Court will resolve the issue raised by the defendant's motion on the merits. Given the adjournment of the trial, there is sufficient time for the parties to brief, and the Court to resolve, the issue.

The Court believes that the defendant's motion raises an issue that requires full briefing by each of the parties. The letter motion and opposition are not sufficiently detailed and do not provide the Court the full factual record upon which to make a determination regarding whether a


hearing is needed to resolve the motion and to evaluate the merits of the motion.

Therefore, the defendant is directed to submit his motion to preclude the identification no later than March 25, 2024. Any opposition is due no later than two weeks following the date of service of the motion. Any reply is due no later than one week following the date of service of the opposition. The parties briefing should not refer to the earlier letter briefing, which the Court will not consider in evaluating the motion. The parties may request a modification of this schedule if warranted by the competency hearing ordered by the Court earlier today.

The Clerk of Court is directed to terminate the motion pending a Dkt. No. 113.

SO ORDERED.

Dated: March 11, 2024



GREGORY H. WOODS
United States District Judge